

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**In Re: PHARMACEUTICAL
INDUSTRY AVERAGE WHOLESALE
PRICE LITIGATION**

) MDL No. 1456

) Master File No. 01-12257-PBS

) Subcategory Case. No. 06-11337

THIS DOCUMENT RELATES TO:

) Hon. Patti B. Saris

U.S. ex rel. Ven-A-Care of the Florida Keys,

) Magistrate Judge

Inc. v. Dey Inc., et al.

) Marianne B. Bowler

Civil Action No. 05-11084-PBS

**DEFENDANTS DEY, INC., DEY, L.P., AND DEY L.P., INC.'S
MOTION TO DISMISS THE RELATOR'S COMPLAINTS
FOR LACK OF SUBJECT MATTER JURISDICTION**

Pursuant to the Rule 12(b)(1) of the Federal Rules of Civil Procedure and the “public disclosure/original source” rule of 31 U.S.C. § 3730(e)(4) of the False Claims Act, Defendants Dey, Inc., Dey, L.P., and Dey L.P., Inc. (collectively, “Dey”) respectfully move this Court for an order dismissing relator Ven-A-Care of the Florida Keys, Inc.’s (“Relator” or “Ven-A-Care”) complaints against Dey for lack of subject matter jurisdiction. The grounds for this motion are set forth in the Memorandum of Law in Support of Dey’s Motion to Dismiss the Relator’s Complaints for Lack of Subject Matter Jurisdiction.

In support of its motion, Dey submits herewith and/or relies upon: (i) the Memorandum of Law in Support of Dey, Inc., Dey, L.P., and Dey L.P., Inc.’s Motion to Dismiss the Relator’s Complaints for Lack of Subject Matter Jurisdiction; (ii) the Declaration of Sarah L. Reid in Support of Dey, Inc., Dey, L.P., and Dey L.P., Inc.’s Motion for to Dismiss the Relator’s Complaints for Lack of Subject Matter Jurisdiction, dated June 29, 2009, and the exhibits annexed thereto; (iii) the Declaration of Sarah L. Reid in Support of Dey, Inc., Dey, L.P., and Dey L.P., Inc.’s Motion for Partial Summary Judgment, filed on June 26, 2009 (Docket No.

6184); and (iv) the Declaration of Laurent J. Stiroh in Support of Dey, Inc., Dey, L.P., and Dey L.P., Inc.'s Motion for Partial Summary Judgment, filed on June 26, 2009 (Docket No. 6182).

Pursuant to Local Rule 7.1(a)(2), counsel for Dey has conferred with counsel for the United States in a good faith effort to resolve or narrow the issues set forth herein, but has been unable to reach an agreement.

WHEREFORE, for the reasons set forth in the memorandum described above and the other documents described above referenced therein, Defendants Dey, Inc., Dey, L.P., and Dey L.P., Inc. respectfully request that the Court grant its motion for to dismiss the relator Ven-A-Care's complaints for lack of subject matter jurisdiction and enter an Order dismissing Ven-A-Care's complaints against Dey with prejudice, and providing other and further relief as the Court deems just and proper.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1, Dey believes that oral argument may assist the Court in resolving the issues presented in this motion and respectfully requests that oral argument be heard.

Dated: June 29, 2009

Respectfully Submitted,

KELLEY DRYE & WARREN LLP

By: /s/Sarah L. Reid
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*Attorneys for Defendants Dey, Inc.
Dey, L.P., and Dey, L.P., Inc.*

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by causing to be sent, on June 29, 2009, a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Sarah L. Reid

Sarah L. Reid